



CITY OF  
CINCINNATI

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*ODOT LPA Certification*

# APPENDIX K

  

# DISPUTE RESOLUTION PROCEDURE

## **DISPUTE RESOLUTION AND ADMINISTRATIVE CLAIM PROCESS**

The Contractor must follow this process in order to resolve disputes on the project and to seek additional compensation or contract time from the City in the form of an administrative claim.

The Contractor must exhaust this process prior to filing an action in the Ohio Court of Claims. These procedures do not compromise the Contractor's right to seek relief in the Ohio Court of Claims.

All parties in the dispute must follow the specified steps. Personnel involved in second or third tier review will not consider a dispute until it has been properly reviewed by the previous tier.

The Contractor's personnel shall not contact City personnel involved in a second or third tier review until the dispute has been thoroughly reviewed by the previous tier.

Disputes will include disagreements, matters in question, and differences of opinion between City personnel and the Contractor. Claims are disputes that are not settled in the dispute resolution process for which the Contractor has documented costs or time incurred as a result of such disputes.

Disputes and claims by subcontractors and suppliers may be pursued by the Contractor on behalf of subcontractors or suppliers. Disputes and claims of subcontractors and supplies against the Contractor will not be reviewed by the City. Disputes and claims by subcontractors and suppliers against the City but not supported by the Contractor will not be reviewed by the City.

Disputes and claims subject to review by the City include:

1. Interpretation of specifications, standard drawings, plans, the proposal, working drawings, change orders, and orders by City personnel having authority over the project.
2. Differing site conditions as defined in 104.02(a).

3. Cost and time incurred by:
  - a. Suspension of the work under 104.02(b).
  - b. Significant changes in scope of work under 104.02(c).
  - c. Utility interference with the work under 105.06 and 4A notes.
  - d. Extra work ordered under 104.03 and the policy on Change Orders.
  - e. Acts or inaction of the City or other government agencies.
4. Adequacy and constructibility of the plan design.
5. Contract time extensions due to weather, shortages of labor, equipment or materials, or other causes beyond the Contractor's control as defined in the policy on *Postponement of Contract Completion Dates and Waiver of Liquidated Damages*.
6. Other subjects mutually agreed upon by the City and Contractor to be under the scope of the dispute resolution and claims process.

## **DISPUTE RESOLUTION**

**Early Notice.** The Contractor, or subcontractor through the Contractor, shall give to the Construction Engineer written notice of any circumstance or dispute on the project that may result in a claim. This early notice must be given by the end of the second working day following the occurrence of the circumstance or dispute. The Engineer and Contractor or subcontractor shall maintain records of labor, equipment, and materials used on the disputed work or made necessary by the circumstance. Such records shall start when the Engineer receives early notice or when the project personnel are aware of the Circumstance or dispute.

**Continuation of Work.** The Contractor or subcontractor shall continue with all project work, including that which is in dispute. The City will continue payments for contract work.

**STEP 1 of Dispute Resolution (Project Level).** The Construction Engineer will meet with the Contractor's superintendent within two (2) working days of receipt of any early notice. They shall review all pertinent information and contract provisions and negotiate an equitable settlement according to the Contract Documents. If settlement is not achieved, they must escalate the dispute to Step 2.

**STEP 2 of Dispute Resolution (Principal Engineer Level).** If the dispute is escalated to Step 2, the Contractor shall request a meeting with the Principal Construction Engineer. Personnel from the Contractor's headquarters and the Principal Construction Engineer shall meet to consider the dispute. This Step 2 meeting shall occur within ten (10) working days of the completion of Step 1. The City and Contractor's personnel shall review the information on the dispute presented by the personnel involved in Step 1 and negotiate an equitable settlement according to the Contractor Documents. If settlement is not achieved, they must escalate the dispute to Step 3.

**STEP 3 of Dispute Resolution (City Engineer/Chief Engineer Level).** The City Engineer and Chief Engineer will review disputes that are escalated to Step 3.

**Notice of Claim.** The claim process is started by the Contractor, who must provide the City Engineer/Chief Engineer written *Notice of Intent to File a Claim* within thirty (30) calendar days of the completion of Step 2. This notice shall state the Contractor's request for a hearing on the claim or for an acceptable alternative dispute resolution technique.

The dispute becomes a claim when the City Engineer/Chief Engineer receives the *Notice of Intent to File a Claim*.

**Claim Certification Requirements.** When submitting any claim, the Contractor must certify the claim, under oath, in writing. Such certification shall attest to the following:

1. The claim is made in good faith.
2. To the best of the Contractor's knowledge, all data offered to support the claim is accurate and complete.
3. The claim amount accurately reflects the Contractor's actual incurred costs.

This claim certification shall also be notarized, pursuant to the laws of the State of Ohio.

The following is an example of the correct form for a claim certification:

(The Contractor) certifies that this claim is made in good faith, that all supporting data is accurate and complete to the best of (the Contractor's) knowledge and belief, and that the claim amount accurately reflects the contract adjustment for which (the Contractor believes the city is liable.

(The Contractor)

By: \_\_\_\_\_

(Name and Title)

Date of Execution: \_\_\_\_\_

The City shall pay interest on any amount found due on a claim, which is not paid within 30 days of the City's receipt of the certified claim. Such interest shall be paid to the Contractor for the period beginning on the thirty-first (31<sup>st</sup>) day after the City's receipt of the certified claim, and ending on the day that the payment of the amount due is made. Interest payments provided for in this provision shall be at the rate per calendar month that equals one-twelfth of the rate per annum prescribed by section 5703.47 of the *Ohio Revised Code* for the calendar year that includes the month for which the interest charge accrues.

**Claim Documentation Requirements.**

The dispute document shall be an original document that clearly and in detail gives the following information for each item of additional compensation and time extension requested:

- a. A narrative of the disputed work or project circumstances at issue, with sufficient description and information to enable understanding by a third person who is not familiar with the project. This section must include the dates of the disputed work and the date of early notice.
- b. References to the applicable provisions of the plans, specifications, proposal, or other contract documents. Copies of the chief provisions shall be included in the claim documents.
- c. The dollar amount of additional compensation and length of contract time extension being requested.
- d. The cost and schedule analysis and supporting documents that were the basis for the requested compensation and time extensions stated in *c*.
- e. Copies of relevant correspondence and other pertinent documents.

The dispute document shall be identified by Contract Number, Contractor name, subcontractor, or supplier (if involved in the dispute), and dispute number.

The City Engineer/Chief Engineer will schedule a hearing on the dispute within fifteen (15) working days of receiving acceptable dispute documentation, or as otherwise agreed to by the City Engineer/Chief Engineer and the Contractor. The Contractor's position on the dispute will be presented by executive officers of the Contractor (maximum three). The Principal Engineer will present the reasons the dispute was not resolved. The City Engineer/Chief Engineer will issue a written decision on the dispute within fifteen (15) working days of the hearing.

**STEP 4 - ALTERNATIVE DISPUTE RESOLUTION (ADR)**

The Contractor may request ADR in lieu of filing action in a court of claims. The City may agree to arbitration or mediation in the manner in which those methods are practiced by the City and allowed by law.

The City will coordinate the following: the agreement of the parties to the ADR method; the selection of a neutral third party or technical expert; and the equal sharing of the fees of the neutral third party or technical expert. The City will obtain a written agreement, signed by both parties, that establishes the ADR. The neutral third party or technical expert will have complete control of the claim upon execution of the ADR agreement.

